

of the annuity in question, to his widow, the complainant, which, it is contended, and perhaps under a different state of circumstances, it might properly be contended, would create a charge upon the land devised. There can be no doubt, that a widow, with respect to a devise made to her in lieu of her dower, is to be considered as a purchaser with a fair consideration; but if the provision made for the wife by the will is fraudulent, in being greater than the value of her common law rights, and therefore unjust and injurious to creditors—to the extent of such excess, her title would not prevail against the claims of creditors. *Gibson et al. vs. McCormick*, 10 *Gill and Johnson*, 113, 114.

In this case, it is not understood, that the provision for the widow exceeds her common law rights, and is, therefore, unjust to the body of the creditors of the testator; but the question is, whether, after having in his lifetime given to one of his creditors a mortgage on a particular portion of his estate, to secure the claim of that creditor, he can afterwards take that security from him, by charging the same part of his estate with the provision for his wife, even though the provision, in view of his whole estate, does not exceed her common law rights?

“*Marengo*” is the estate upon which the testator gave a mortgage, to secure the debt due from him to the bank, but he afterwards, by his will, charges this same estate with the provisions for his widow, and by this charge, if the complainant is successful in his pretensions, the security to the bank is most effectually destroyed, and this without necessity, as it is manifest the testator owned other estates, out of which the proper provision for his wife could have been made. It seems to me impossible such a doctrine can be established; for if so, it would place creditors who have obtained security from their debtors, frequently, entirely at their mercy. The utmost that the wife could claim under such circumstances, would be to the extent of her dower interest in the particular land mortgaged, and the husband could not be allowed, by throwing his wife’s dower entirely upon it, to wrest from his creditors a security which he had fairly given him. The widow, for the